

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

VICTORIA CAREY, MARIE BURRIS, )  
MICHAEL KISER, and BRENT NIX, )  
individually and on behalf of all others )  
similarly situated, )

Plaintiffs, )

v. )

E.I. DU PONT DE NEMOURS AND )  
COMPANY and THE CHEMOURS )  
COMPANY FC, LLC, )

Defendants. )

Case Nos.:

7:17-CV-00189-D

7:17-CV-00197-D

7:17-CV-00201-D

---

CAPE FEAR PUBLIC UTILITY )  
AUTHORITY, )

Plaintiff, )

v. )

THE CHEMOURS COMPANY FC, )  
LLC, et al., )

Defendants. )

Case No.:

7:17-CV-00195-D

---

BRUNSWICK COUNTY, a )  
governmental entity, )

Plaintiff, )

v. )

DOWDUPONT, INC., et al., )

Defendants. )

Case No.:

7:17-CV-00209-D

## **DEFENDANTS' RESPONSE TO PLAINTIFFS' JOINT MOTION FOR A STATUS CONFERENCE**

Pursuant to Local Civil Rules 7.1(f) and 7.2, Defendants E.I. Du Pont de Nemours and Company, The Chemours Company FC, LLC, and The Chemours Company (collectively, "Defendants") submit this Response to Plaintiffs' Joint Motion for a Status Conference.

Plaintiffs cite two reasons why a Rule 16 status conference should be held at this time. First, Plaintiffs claim that the Court should be updated on the status of the Proposed Consent Order between the North Carolina Department of Environmental Quality and The Chemours Company FC, LLC. However, the Proposed Consent Order has not been entered, and Plaintiffs' motion does not identify any significant developments with regard to the Proposed Consent Order that need to be presented to the Court at this time. Further, even if the Proposed Consent Order is finalized and entered, the parties can brief the issue to the Court without the need for a status conference.

Second, Plaintiffs argue that a Rule 16 status conference would be helpful in advancing the case because there are currently motions pending before the Court, including Defendants' Motion to Dismiss and Plaintiffs' Joint Motion to Compel a Discovery Conference. However, the Court already declined Plaintiffs' previous request for a Rule 26(f) conference, holding that Defendants' pending, potentially dispositive Rule 12 motions should first be resolved. Because Defendants' Rule 12 motions remain pending, Defendants respectfully submit that a Rule 16 status conference is premature and that judicial economy would be better served by convening after the Court has ruled on Defendants' motions and the parameters of these cases have been more fully delineated.

As noted above, the issue of whether a Rule 26(f) conference should be held before this Court has ruled on Defendants' motions to dismiss has already been briefed and decided by this Court. The analysis regarding a request for a Rule 16 conference should be no different. On December 15, 2017, Plaintiffs filed a motion for limited expedited discovery to obtain sampling

on Chemours' Fayetteville Works facility. [*Carey* D.E. 34]. Defendants filed their opposition on December 29, 2017. [*Carey* D.E. 36].

On April 18, 2018, Plaintiffs filed a motion to compel a Rule 26(f) conference. [*Carey* D.E. 64]. Defendants filed their opposition on April 20, 2018. [*Carey* D.E. 65]. In that opposition, Defendants set forth that, consistent with the Court's practice and Local Rules, a Rule 26(f) conference should take place only after the Court has ruled on Defendants' motions to dismiss all of Plaintiffs' claims, or in the alternative, stay the cases pursuant to the doctrine of primary jurisdiction. [*Carey* D.E. 65 at pg. 2]. On May 3, 2018, Plaintiffs filed a motion for a status conference to discuss the expedited discovery and the "parties' competing positions on a Rule 26(f) conference." [*Carey* D.E. 67].

The Court scheduled a status conference for May 25, 2018. The Court heard argument on Plaintiffs' request for a Rule 26(f) conference but ruled that a Rule 26(f) conference was not necessary while Defendants' motions to dismiss remained pending. Notwithstanding this Court's ruling, Plaintiffs filed yet another motion to compel on December 19, 2018. Defendants filed their opposition on January 2, 2019. [*Carey* D.E. 94].

Plaintiffs now ask this Court for a Rule 16 status conference to address these same issues. But, a status conference at this juncture will simply waste judicial and party resources, as it will cover the same matters that were already fully briefed by the parties and resolved at the May 25, 2018 status conference.

Because Plaintiffs have identified no reason for this Court to schedule a status conference, Defendants respectfully request that this Court deny Plaintiffs' Joint Motion for a Status Conference.

This 6th day of February, 2019.

/s/ John K. Sherk III  
CA State Bar. No. 295838  
SHOOK, HARDY AND BACON,  
LLP  
One Montgomery, Suite 2700  
San Francisco, CA 94104  
Phone: 415-544-1900  
Fax: 415-391-0281  
jsherk@shb.com

Kenneth J. Reilly  
FL State Bar No. 157082  
SHOOK, HARDY AND BACON,  
LLP  
201 S. Biscayne Blvd  
3200 Miami Center  
Miami, FL 33131  
Phone: 305-960-6907  
Fax: 305-385-7470  
kreilly@shb.com

Mark D. Anstoetter  
MO State Bar No. 47638  
SHOOK, HARDY AND BACON,  
LLP  
2555 Grand Boulevard  
Kansas City, MO 64108  
Phone: 816-474-6550  
Fax: 816-421-5547  
manstoetter@shb.com

/s/ Stephen D. Feldman  
Jonathan D. Sasser  
N.C. State Bar No. 10028  
Stephen D. Feldman  
N.C. State Bar. No. 34940  
ELLIS & WINTERS LLP  
4131 Parklake Avenue, Suite 400  
Raleigh, NC 27612  
Phone: 919-865-7005  
Fax: 919-865-7010  
Stephen.Feldman@elliswinters.com

Counsel for Defendants

### **CERTIFICATE OF SERVICE**

I hereby certify that the undersigned electronically filed the foregoing document with the Clerk of the Court using the ECF system on February 6, 2019, which will send electronic notification of such filing to all counsel of record.

/s/ John K. Sherk, III  
Attorney for Defendants